

**STATE OF TEXAS
DEPARTMENT OF INFORMATION RESOURCES
CONTRACT FOR PRODUCTS AND RELATED SERVICES
DESIGNS THAT COMPUTE
dba VISIONALITY**

1. Introduction

A. Parties

This Contract for products and related services is entered into between the State of Texas, acting by and through the Department of Information Resources (hereinafter “DIR”) with its principal place of business at 300 West 15th Street, Suite 1300, Austin, Texas 78701, and Designs That Compute, dba Visionality (hereinafter “Vendor”), with its principal place of business at 1778 North Plano Road, Suite 211B, Richardson, Texas 75081.

B. Compliance with Procurement Laws

This Contract is the result of compliance with applicable procurement laws of the State of Texas. DIR issued a solicitation on the Texas Building and Procurement Commission’s Electronic State Business Daily, Request for Offer (RFO) DIR-SDD-TMP-054, on January 18, 2005, for Videoconferencing Hardware and Related Services. Upon execution of this Contract, a notice of award for RFO DIR-SDD-TMP-054 shall be posted by DIR on the Electronic State Business Daily.

C. Order of Precedence

This Contract; Appendix A, Standard Terms and Conditions For Products and Related Services Contracts; Appendix B, Vendor’s Historically Underutilized Businesses Subcontracting Plan; Appendix C, Product and Pricing Index; Exhibit 1, Vendor’s Response to RFO DIR-SDD-TMP-054, including all addenda; and Exhibit 2, RFO DIR-SDD-TMP-054, including all addenda; are incorporated by reference and constitute the entire agreement between DIR and Vendor. In the event of a conflict between the documents listed in this paragraph, the controlling document shall be this Contract, then Appendix A, then Appendix B, then Appendix C, then Exhibit 1, then finally Exhibit 2. In the event and to the extent any provisions contained in multiple documents address the same or substantially the same subject matter but do not actually conflict, the more recent provisions shall be deemed to have superseded earlier provisions.

2. Term of Contract

The term of this Contract shall be one (1) year commencing on the last date of approval by DIR and Vendor. Prior to expiration of the original term, DIR and Vendor may extend the Contract, upon mutual agreement, for up to three (3) optional one-year terms.

3. Product and Service Offerings

A. Products

Products available under this Contract are limited to videoconferencing hardware and related peripherals/software manufactured by the following:

1. Polycom
2. Tandberg
3. Codian
4. Radvision

Vendor may also provide additional third-party manufactured peripherals/supplies from LG Plasma and Smart Technologies that may be required to complete a videoconferencing solution. Examples of third-party manufactured peripherals/supplies; may include but not be limited to, plasma screens, microphones, projectors, integration components, carts, and cameras. Vendor may incorporate changes to their product offering; however, any changes must be within the scope of products awarded based on the posting described in Section 1.B above.

B. Services

Services available under this Contract include but are not limited to: product selection/configuration assistance, installation, troubleshooting, maintenance and support, technical services, managed services, and product training. Online meeting services (software/internet), video streaming via the internet, and videoconferencing connection services are excluded from this Contract. Vendor may incorporate changes to their service offering; however, any changes must be within the scope of services awarded based on the posting described in Section 1.B above.

4. Pricing

A. Manufacturer's Suggested Retail Price (MSRP)

MSRP is defined as the product sales price suggested by the Manufacturer.

B. Customer Discount

The minimum Customer discount for all products will be the percentage off MSRP and is set forth within Appendix C, Product and Pricing Index.

Customer Discount includes the DIR administrative Fee specified in Section 5.

C. Customer Price

1) The price to the Customer shall be calculated as follows:

$$\text{Customer Price} = \text{MSRP} - \text{Customer Discount}$$

2) Customers purchasing products and services under this Contract may negotiate more advantageous pricing or participate in special promotional offers. In such event, a copy of such better offerings shall be furnished to DIR upon request.

3) If pricing for products or services available under this Contract are provided at a lower price to: (i) an eligible Customer who is not purchasing those products or services under this Contract or (ii) any other entity or consortia authorized by Texas law to sell said products and services to eligible Customers, then the available Customer Price in this Contract shall be adjusted to that lower price. This Contract shall be amended in accordance within ten (10) business days to reflect the lower price. Pricing for products or services is defined herein as the standard pricing practices in the normal course of business and excludes discounted prices for events such as, but not limited to, product closeouts, overstock sales, sells of discontinued or older model products, special limited time manufacturer pricing, limited time rebates, and/or incentives for purchases of large quantities.

D. DIR Administrative Fee

The administrative fee specified in Section 5 below shall not be broken out as a separate line item when pricing or invoice is provided to Customer.

E. Shipping and Handling Fees

The price to the Customer under this Contract shall include all shipping and handling fees for all products, excluding the products that fall within the specified categories listed in Appendix C, Product and Pricing Index. All shipments will be Free On Board Customer's destination. No additional fees shall be charged to the Customer for standard shipping and handling, with the exception of the products that fall within the specified categories listed in Appendix C, Product and Pricing Index. For those products that shipping and handling is not included in the price, Vendor shall provide the shipping charge to the Customer at the time of quotation. If the Customer requests expedited delivery, Customer will be responsible for any charges for expedited delivery.

F. Tax-Exempt

As per Section 151.309, Texas Tax Code, Customers under this Contract are exempt from the assessment of State sales, use and excise taxes. Further, Customers under this Contract are exempt from Federal Excise Taxes, 26 United States Code Sections 4253(i) and (j).

G. Travel Expense Reimbursement

Pricing for services provided under this Contract are exclusive of any travel expenses that may be incurred in the performance of those services. Travel expense reimbursement may include personal vehicle mileage or commercial coach transportation, hotel accommodations, parking and meals; provided, however, the amount of reimbursement by Customers shall not exceed the amounts authorized by the current State Travel Regulations. Travel time may not be included as part of the amounts payable by Customer for any services rendered under this Contract. The DIR administrative fee specified in Section 5 below is not applicable to travel expense reimbursement. Anticipated travel expenses must be pre-approved in writing by Customer.

H. Changes to Prices

Vendor may change the price of any product or service at any time, based upon changes to the MSRP, but discount levels shall remain consistent with the discount levels specified within Appendix C, Product and Pricing Index. Price decreases shall take effect automatically during the term of this Contract and shall be passed onto the Customer immediately. If a manufacturer of the products available within this Contract changes its pricing structure significantly to the effect that Vendor will not be able to support the Customer discounts as specified within Appendix C, Product and Pricing Index, Vendor shall provide documentation from the manufacturer to DIR to support the manufacturer's pricing structure change before DIR will consider or agree to renegotiate Customer discounts within this Contract.

5. DIR Administrative Fee

A) The administrative fee to be paid by the Vendor to DIR based on the dollar value of all sales to Customers pursuant to this Contract is two percent (2%). Payment will be calculated for all sales, net of returns and credits. For example, the administrative fee for sales totaling \$100,000 shall be \$2,000.00.

B) All prices quoted to Customers shall include the administrative fee. DIR reserves the right to change this fee upwards or downwards during the term of this Contract, upon written notice to Vendor. Any change in the administrative fee shall be incorporated in the price to the Customer.

6. Notification

All notices under this Contract shall be sent to a party at the respective address indicated below.

If sent to the State:

Sherri Parks, Service Delivery Division
Department of Information Resources
300 W. 15th St., Suite 1300
Austin, Texas 78701
Phone: (512) 475-4700
Facsimile: (512) 475-4759
Email: sherri.parks@dir.state.tx.us

If sent to the Vendor:

Howard Barnett, President
Designs That Compute dba Visionality
1778 N. Plano Road, Suite # 211B
Richardson, Texas 75081
Phone: (214) 276-0124
Facsimile: (214) 276-0123
Email: howard@visionality.com

7. Software License and Service Agreements

A. Software License Agreement

Customers acquiring product software licenses (shrink-wrap) under the Contract shall comply with any manufacturer's software licensing terms and conditions. DIR shall not be responsible for any Customer's compliance with any software license terms and conditions that may be applicable to the products. If DIR purchases software for its own use under this Contract, it shall be responsible for its compliance with the applicable software license terms and conditions.

B. Service Agreement

Customers purchasing services under this Contract that may require a service agreement shall individually negotiate the terms and conditions of the applicable service agreement directly with the Vendor. Terms and conditions stated within a service agreement shall not conflict or weaken any term as stated within this Contract. The service agreement terms and conditions must be agreed to by the Vendor and Customer.

DIR shall not be a party to any service agreement executed between the Vendor and Customer, except to offer such services through the Contract. Compliance with any applicable service agreement is the responsibility of the Customer. DIR shall not be responsible for any Customer's compliance as it pertains to a service agreement. If DIR purchases services for its own use under the Contract, it shall be responsible for its own negotiation and compliance of the applicable service agreement terms and conditions.

8. Authorized Exceptions to Appendix A, Standard Terms and Conditions for Product and Related Services Contracts.

- a. **Section 3, Definitions**, the below is hereby restated as follows:

A. Customer – any Texas state agency, unit of local government, institution of higher education as defined in Section 2054.003, Texas Government Code, and those state agencies purchasing from a DIR contract through an Interagency Agreement, as authorized by Chapter 771, Texas Government Code, and any local government as authorized through the Interlocal Cooperation Act, Chapter 791, Texas Government Code, and the state agencies and political subdivisions of other states as authorized by Section 2054.0565, Texas Government Code.

D. Order Fulfiller – means Designs That Compute, dba Visionality.

- b. **Section 4.E, Survival**, is hereby restated as follows:

All applicable software license agreements, warranties or service agreements that were entered into between Vendor and a Customer under the terms and conditions of the Contract shall survive the expiration or termination of the Contract. All Purchase Orders issued and accepted by Order Fulfiller shall survive expiration or termination of the Contract.

- c. **Section 5.B, Commodity Software**, is hereby re-titled as **Purchase of Commodity Items (Applicable to State Agency Purchases Only)**, and is hereby restated in its entirety as follows:

1) Texas Government Code, §2157.068 requires State agencies to buy commodity items, as defined in 5.B.2 below, in accordance with contracts developed by DIR, unless the agency obtains an exemption from DIR.

2) Commodity items are commercially available software, hardware and technology services that are generally available to businesses or the public and for which DIR determines that a reasonable demand exists in two or more state agencies. Hardware is the physical technology used to process, manage, store, transmit, receive or deliver information. Software is the commercially available programs that operate hardware

and includes all supporting documentation, media on which the software may be contained or stored, related materials, modifications, versions, upgrades, enhancements, updates or replacements. Technology services are the services, functions and activities that facilitate the design, implementation, creation, or use of software or hardware. Technology services include seat management, staffing augmentation, training, maintenance and subscription services. Technology services do not include telecommunications services. Seat management is services through which a state agency transfers its responsibilities to a vendor to manage its personal computing needs, including all necessary hardware, software and technology services.

3) Vendor agrees to coordinate all State agency commodity item sales through existing DIR contracts. Institutions of higher education are exempt from this Section.

- d. **Section 6.B, Use of Order Fulfillers**, is hereby deleted in its entirety.
- e. **Section 6.C, Product Warranty and Return Policy**, is hereby restated as follows:
Vendor will adhere to the Vendor's and/or manufacturer's then-currently published policies concerning product warranties and returns. Product warranty and return policies for Customers will not be more restrictive or more costly than warranty and return policies for other similarly situated Customers for like products.
- f. **Section 6.E.3, Website Compliance Checks**, is hereby restated as follows:
Periodic compliance checks of the information posted for the Contract on Vendor's website will be conducted by DIR. Upon request by DIR, Vendor shall provide verifiable documentation that pricing listed upon this website is uniform with the pricing as stated within Appendix C, Product and Pricing Index.
- g. **Section 7.A, Purchase Orders**, is hereby restated as follows:
All Customer Purchase Orders will be placed directly with the Vendor. Customers shall reference Contract Number DIR-SDD-214 on the Purchase Order. Accurate Purchase Orders shall be effective and binding upon Vendor when accepted by Vendor.
- h. **Section 9.J, Limitation of Liability**, is hereby restated as follows:
Vendor is a reseller of the products contained within this Contract. Warranty and liability for use of any product sold through this Contract is limited to what is stated by the manufacturer of the products. Vendor creates no warranties express or implied beyond the manufacturer's warranty. Vendor expressly assigns such manufacturer warranties to Customer purchasing the manufacturer's products.

The express obligation stated above is in lieu of all liabilities or obligations of Vendor for damages, any loss or injury, direct or consequential (including any loss of profits, use, business or the like, even if Vendor has been advised of the possibility of same), arising out of or in connection with the delivery, use or performance of the products resold by Vendor, and it is agreed that repair or replacement, in accordance with the foregoing warranty, is Vendor's sole liability and Customer's sole remedy for such liability, loss, damage, or injury. This limitation of Vendor's liability will apply regardless of the form of action, whether in contract or tort (including negligence) or based on a warranty.

To the extent any limitation of liability contained herein is construed by a court of competent jurisdiction to be a limitation of liability in violation of State law, such limitation of liability shall be void, however the validity of the remaining parts, terms or provisions shall not be affected thereby, and said illegal or invalid part, term or provision shall be deemed not to be a part of this limitation of liability.

IN WITNESS WHEREOF, the parties execute this Contract to be effective as of the date of last signature.

**Designs That Compute
dba Visionality**

**The State of Texas, acting by and through the
Department of Information Resources**

Authorized By: *signature on file*

Authorized By: *signature on file*

Name: Howard Barnett

Name: Brian S. Rawson

Title: President

Title: Director of Service Delivery

Date: 11/22/05

Date: 11/18/05

Legal: chk, 11/16/05